

1 JOHN S. BATTENFELD, State Bar No. 119513  
2 ALBERT HUANG, State Bar No. 193005  
3 MORGAN, LEWIS & BOCKIUS LLP  
4 300 South Grand Avenue  
5 Twenty-Second Floor  
6 Los Angeles, CA 90071-3132  
7 Tel: 213.612.2500  
8 Fax: 213.612.2501  
9 E-mail: jbattenfeld@morganlewis.com  
10 ahuang@morganlewis.com

11 ERIC MECKLEY, State Bar No. 168181  
12 STEVEN J. GARRETT, State Bar No. 221021  
13 MORGAN, LEWIS & BOCKIUS LLP  
14 One Market, Spear Street Tower  
15 San Francisco, CA 94105-1126  
16 Tel: 415.442.1000  
17 Fax: 415.442.1001  
18 E-mail: emeckley@morganlewis.com  
19 steven.garrett@morganlewis.com

20 Attorneys for Defendant  
21 LANE BRYANT, INC.

22 UNITED STATES DISTRICT COURT  
23  
24 NORTHERN DISTRICT OF CALIFORNIA

25 SHAMEIKA MOODY, as an  
26 individual and on behalf of others  
27 similarly situated,

28 Plaintiff,

vs.

CHARMING SHOPPES OF  
DELAWARE, INC., a corporation;  
LANE BRYANT, INC., a  
corporation; CHARMING  
SHOPPES, INC., a corporation, and  
DOES 1 through 20, inclusive,

Defendants.

Case No. C 07-06073 MHP

**DEFENDANT LANE BRYANT,  
INC.'S ANSWER TO PLAINTIFF'S  
FIRST AMENDED COMPLAINT**

///

///

///

1 Defendant Lane Bryant, Inc. ("Lane Bryant"), by and through its counsel,  
2 hereby answers the allegations against Lane Bryant contained in Plaintiff Shameika  
3 Moody's First Amended Complaint (hereinafter "FAC"), for itself and no other  
4 Defendant, in accordance with the numbered Paragraphs thereof, as follows:

5 **INTRODUCTION**

6 1. Lane Bryant contends that the allegations contained in  
7 paragraph 1 of the FAC regarding jurisdiction under the California Labor Code and  
8 Business and Professions Code constitute conclusions of law and/or legal  
9 arguments and that no admission or denial is therefore necessary. To the extent a  
10 response is required, Lane Bryant denies the allegations contained in paragraph 1 of  
11 the FAC.

12 2. Lane Bryant contends that the allegations contained in  
13 paragraph 2 of the FAC constitute conclusions of law and/or legal arguments and  
14 that no admission or denial is therefore necessary. To the extent a response is  
15 required, Lane Bryant denies the allegations contained in paragraph 2 of the FAC.

16 3. Lane Bryant denies the allegations contained in paragraph 3 of  
17 the FAC.

18 4. Lane Bryant denies the allegations contained in paragraph 4 of  
19 the FAC.

20 5. Lane Bryant denies the allegations contained in paragraph 5 of  
21 the FAC.

22 **JURISDICTION AND VENUE**

23 6. Lane Bryant contends that the allegations contained in  
24 paragraph 6 of the FAC regarding jurisdiction under the California Labor Code and  
25 Business and Professions Code constitute conclusions of law and/or legal  
26 arguments and that no admission or denial is therefore necessary. To the extent a  
27 response is required, Lane Bryant denies the allegations contained in paragraph 6 of  
28 the FAC.

1           7. Lane Bryant contends that the allegations contained in  
2 paragraph 7 of the FAC constitute conclusions of law and/or legal arguments and  
3 that no admission or denial is therefore necessary. To the extent a response is  
4 required, Lane Bryant denies the allegations contained in paragraph 7 of the FAC,  
5 except that Lane Bryant admits that Charming Shoppes of Delaware, Inc. makes  
6 payment on behalf of Lane Bryant, Inc. for Lane Bryant, Inc.'s payroll taxes in  
7 California and California State Disability payments.

8           8. Lane Bryant contends that the allegations contained in  
9 paragraph 8 of the FAC constitute conclusions of law and/or legal arguments and  
10 that no admission or denial is therefore necessary. To the extent a response is  
11 required, Lane Bryant denies the allegations contained in paragraph 8 of the FAC,  
12 except that Lane Bryant admits that Plaintiff was employed by Lane Bryant, Lane  
13 Bryant operates stores in the State of California, and Lane Bryant employs  
14 managerial employees in California.

15           9. Lane Bryant contends that the allegations contained in  
16 paragraph 9 of the FAC constitute conclusions of law and/or legal arguments and  
17 that no admission or denial is therefore necessary. To the extent a response is  
18 required, Lane Bryant denies the allegations contained in paragraph 9 of the FAC,  
19 except that Lane Bryant admits that Charming Shoppes, Inc. is the parent  
20 corporation of Lane Bryant.

21           10. Lane Bryant contends that the allegations contained in  
22 paragraph 10 of the FAC constitute conclusions of law and/or legal arguments and  
23 that no admission or denial is therefore necessary. To the extent a response is  
24 required, Lane Bryant denies the allegations contained in paragraph 10 of the FAC,  
25 except that Lane Bryant admits that it does business within the State of California  
26 and the County of San Francisco.

27 ///

28 ///

**PARTIES**

11. Lane Bryant contends that the allegations contained in paragraph 11 of the FAC constitute conclusions of law and/or legal arguments and that no admission or denial is therefore necessary. To the extent a response is required, Lane Bryant denies the allegations contained in paragraph 11 of the FAC, except that Lane Bryant admits that Plaintiff was employed by Lane Bryant as an Assistant Store Manager from November 2006 until July 2007 at a Lane Bryant retail store located in Pleasanton, California.

12. Lane Bryant contends that certain allegations in paragraph 12 are not directed at this answering Defendant and that no admission or denial is therefore necessary. To the extent a response is required, Lane Bryant denies the allegations contained in paragraph 12 of the FAC, except that Lane Bryant admits that Lane Bryant is a corporation which does business in the State of California and employs employees in the State of California.

13. Lane Bryant denies the allegations contained in paragraph 13 of the FAC, except that Lane Bryant admits that Lane Bryant is a corporation which does business in the State of California.

14. Lane Bryant contends that the allegations contained in paragraph 14 of the FAC constitute conclusions of law and/or legal arguments and that no admission or denial is therefore necessary. To the extent a response is required, Lane Bryant denies the allegations contained in paragraph 14 of the FAC.

15. Lane Bryant denies that it proximately caused Plaintiff or others to be subject to the illegal employment practices, wrongs and injuries complained of in the FAC. Lane Bryant further contends that the allegations improperly refer to "Doe" defendants, as "Doe" defendants are not permitted in federal court pleadings. Lane Bryant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 15 of the FAC and, on that basis, denies the remaining allegations.

1                   16. Lane Bryant denies the allegations contained in paragraph 16 of  
2 the FAC.

3                   17. Lane Bryant denies the allegations contained in paragraph 17 of  
4 the FAC.

5                   18. Lane Bryant denies the allegations contained in paragraph 18 of  
6 the FAC.

7                   19. Lane Bryant denies the allegations contained in paragraph 19 of  
8 the FAC.

9                   **CLASS ACTION ALLEGATIONS**

10                  20. Lane Bryant contends that the allegations contained in  
11 paragraph 20 of the FAC constitute conclusions of law and/or legal arguments and  
12 that no admission or denial is therefore necessary. To the extent a response is  
13 required, Lane Bryant denies the allegations contained in paragraph 20 of the FAC.

14                  21. Lane Bryant contends that the allegations contained in  
15 paragraph 21 of the FAC regarding numerosity constitute conclusions of law and/or  
16 legal arguments and that no admission or denial is therefore necessary. To the  
17 extent a response is required, Lane Bryant denies the allegations regarding  
18 numerosity contained in paragraph 21 of the FAC. Lane Bryant further denies the  
19 remaining allegations contained in paragraph 21 of the FAC.

20                  22. Lane Bryant contends that the allegations contained in  
21 paragraph 22 of the FAC constitute conclusions of law and/or legal arguments and  
22 that no admission or denial is therefore necessary. To the extent a response is  
23 required, Lane Bryant denies the allegations contained in paragraph 22 of the FAC.

24                  23. Lane Bryant denies the allegations contained in paragraph 23 of  
25 the FAC.

26                  24. Lane Bryant denies the allegations contained in paragraph 24 of  
27 the FAC.

28

1           25. Lane Bryant contends that the allegations contained in  
2 paragraph 25 of the FAC constitute conclusions of law and/or legal arguments and  
3 that no admission or denial is therefore necessary. To the extent a response is  
4 required, Lane Bryant denies the allegations contained in paragraph 25 of the FAC.

5           26. Lane Bryant contends that the allegations contained in  
6 paragraph 26 of the FAC regarding constitute conclusions of law and/or legal  
7 arguments and that no admission or denial is therefore necessary. To the extent a  
8 response is required, Lane Bryant denies the allegations contained in paragraph 26  
9 of the FAC.

10           27. Lane Bryant contends that the allegations contained in  
11 paragraph 27 of the FAC constitute conclusions of law and/or legal arguments and  
12 that no admission or denial is therefore necessary. To the extent a response is  
13 required, Lane Bryant denies the allegations regarding contained in paragraph 27 of  
14 the FAC.

15           28. Lane Bryant contends that the allegations contained in  
16 paragraph 28 of the FAC constitute conclusions of law and/or legal arguments and  
17 that no admission or denial is therefore necessary. To the extent a response is  
18 required, Lane Bryant denies the allegations contained in paragraph 28 of the FAC.

19           29. Lane Bryant contends that the allegations contained in  
20 paragraph 29 of the FAC constitute conclusions of law and/or legal arguments and  
21 that no admission or denial is therefore necessary. To the extent a response is  
22 required, Lane Bryant denies the allegations contained in paragraph 29 of the FAC.

23           30. Lane Bryant contends that the allegations contained in  
24 paragraph 30 of the FAC constitute conclusions of law and/or legal arguments and  
25 that no admission or denial is therefore necessary. To the extent a response is  
26 required, Lane Bryant denies the allegations contained in paragraph 30 of the FAC.

27           31. Lane Bryant contends that the allegations contained in  
28 paragraph 31 of the FAC constitute conclusions of law and/or legal arguments and

1 that no admission or denial is therefore necessary. To the extent a response is  
2 required, Lane Bryant denies the allegations contained in paragraph 31 of the FAC.

3 32. Lane Bryant contends that the allegations contained in  
4 paragraph 32 of the FAC constitute conclusions of law and/or legal arguments and  
5 that no admission or denial is therefore necessary. To the extent a response is  
6 required, Lane Bryant denies the allegations contained in paragraph 32 of the FAC.

7 **FIRST CAUSE OF ACTION**

8 33. Lane Bryant incorporates and realleges its responses to the  
9 allegations contained in paragraphs 1 through 32, as if said responses were fully set  
10 forth herein.

11 34. Lane Bryant contends that the allegations contained in  
12 paragraph 34 of the FAC constitute conclusions of law and/or legal arguments and  
13 that no admission or denial is therefore necessary. To the extent a response is  
14 required, Lane Bryant denies the allegations contained in paragraph 34 of the FAC.

15 35. Lane Bryant contends that the allegations contained in  
16 paragraph 35 of the FAC constitute conclusions of law and/or legal arguments and  
17 that no admission or denial is therefore necessary. To the extent a response is  
18 required, Lane Bryant denies the allegations contained in paragraph 35 of the FAC.

19 36. Lane Bryant denies the allegations contained in paragraph 36 of  
20 the FAC.

21 37. Lane Bryant denies the allegations contained in paragraph 37 of  
22 the FAC.

23 38. Lane Bryant contends that the allegations contained in  
24 paragraph 38 of the FAC constitute conclusions of law and/or legal arguments and  
25 that no admission or denial is therefore necessary. To the extent a response is  
26 required, Lane Bryant denies the allegations contained in paragraph 38 of the FAC.

27 39. Lane Bryant denies the allegations contained in paragraph 39 of  
28 the FAC.



1           40. Lane Bryant contends that the allegations contained in  
2 paragraph 40 of the FAC constitute conclusions of law and/or legal arguments and  
3 that no admission or denial is therefore necessary. To the extent a response is  
4 required, Lane Bryant denies the allegations contained in paragraph 40 of the FAC.

5           41. Lane Bryant contends that the allegations contained in  
6 paragraph 41 of the FAC constitute conclusions of law and/or legal arguments and  
7 that no admission or denial is therefore necessary. To the extent a response is  
8 required, Lane Bryant denies the allegations contained in paragraph 41 of the FAC.

9                           **SECOND CAUSE OF ACTION**

10           42. Lane Bryant incorporates and realleges its responses to the  
11 allegations contained in paragraphs 1 through 41, as if said responses were fully set  
12 forth herein.

13           43. Lane Bryant contends that the allegations contained in  
14 paragraph 43 of the FAC constitute conclusions of law and/or legal arguments and  
15 that no admission or denial is therefore necessary. To the extent a response is  
16 required, Lane Bryant denies the allegations contained in paragraph 43 of the FAC.

17           44. Lane Bryant contends that the allegations contained in  
18 paragraph 44 of the FAC constitute conclusions of law and/or legal arguments and  
19 that no admission or denial is therefore necessary. To the extent a response is  
20 required, Lane Bryant denies the allegations contained in paragraph 44 of the FAC.

21           45. Lane Bryant denies the allegations contained in paragraph 45 of  
22 the FAC.

23           46. Lane Bryant contends that the allegations contained in  
24 paragraph 46 of the FAC constitute conclusions of law and/or legal arguments and  
25 that no admission or denial is therefore necessary. To the extent a response is  
26 required, Lane Bryant denies the allegations contained in paragraph 46 of the FAC.

27 ///

28 ///



**THIRD CAUSE OF ACTION**

47. Lane Bryant incorporates and realleges its responses to the allegations contained in paragraphs 1 through 46, as if said responses were fully set forth herein.

48. Lane Bryant denies the allegations contained in paragraph 48 of the FAC.

49. Lane Bryant contends that the allegations contained in paragraph 49 of the FAC constitute conclusions of law and/or legal arguments and that no admission or denial is therefore necessary. To the extent a response is required, Lane Bryant denies the allegations contained in paragraph 49 of the FAC.

50. Lane Bryant denies the allegations contained in paragraph 50 of the FAC.

51. Lane Bryant contends that the allegations contained in paragraph 51 of the FAC constitute conclusions of law and/or legal arguments and that no admission or denial is therefore necessary. To the extent a response is required, Lane Bryant denies the allegations contained in paragraph 51 of the FAC.

52. Lane Bryant denies the allegations contained in paragraph 52 of the FAC.

53. Lane Bryant contends that the allegations contained in paragraph 53 of the FAC constitute conclusions of law and/or legal arguments and that no admission or denial is therefore necessary. To the extent a response is required, Lane Bryant denies the allegations contained in paragraph 53 of the FAC.

**FOURTH CAUSE OF ACTION**

54. Lane Bryant incorporates and realleges its responses to the allegations contained in paragraphs 1 through 53, as if said responses were fully set forth herein.

55. Lane Bryant is not a defendant as to this claim and therefore has no obligation to respond.

1           56. Lane Bryant is not a defendant as to this claim and therefore has  
2 no obligation to respond.

3           57. Lane Bryant is not a defendant as to this claim and therefore has  
4 no obligation to respond.

5           58. Lane Bryant is not a defendant as to this claim and therefore has  
6 no obligation to respond.

7           59. Lane Bryant is not a defendant as to this claim and therefore has  
8 no obligation to respond.

9                           **FIFTH CAUSE OF ACTION**

10           60. Lane Bryant incorporates and realleges its responses to the  
11 allegations contained in paragraphs 1 through 59, as if said responses were fully set  
12 forth herein.

13           61. Lane Bryant contends that the allegations contained in  
14 paragraph 61 of the FAC constitute conclusions of law and/or legal arguments and  
15 that no admission or denial is therefore necessary. To the extent a response is  
16 required, Lane Bryant denies the allegations contained in paragraph 61 of the FAC.

17           62. Lane Bryant contends that the allegations contained in  
18 paragraph 62 of the FAC constitute conclusions of law and/or legal arguments and  
19 that no admission or denial is therefore necessary. To the extent a response is  
20 required, Lane Bryant denies the allegations contained in paragraph 62 of the FAC.

21           63. Lane Bryant contends that the allegations contained in  
22 paragraph 63 of the FAC constitute conclusions of law and/or legal arguments and  
23 that no admission or denial is therefore necessary. To the extent a response is  
24 required, Lane Bryant denies the allegations contained in paragraph 63 of the FAC.

25                           **SIXTH CAUSE OF ACTION**

26           64. Lane Bryant incorporates and realleges its responses to the  
27 allegations contained in paragraphs 1 through 63, as if said responses were fully set  
28 forth herein.

1           65. Lane Bryant contends that the allegations contained in  
2 paragraph 65 of the FAC constitute conclusions of law and/or legal arguments and  
3 that no admission or denial is therefore necessary. To the extent a response is  
4 required, Lane Bryant denies the allegations contained in paragraph 65 of the FAC.

5           66. Lane Bryant contends that the allegations contained in  
6 paragraph 66 of the FAC are not directed at Lane Bryant and constitute conclusions  
7 of law and/or legal arguments and that no admission or denial is therefore  
8 necessary. To the extent a response is required, Lane Bryant denies the allegations  
9 contained in paragraph 66 of the FAC.

10           67. Lane Bryant contends that the allegations contained in  
11 paragraph 67 of the FAC constitute conclusions of law and/or legal arguments and  
12 that no admission or denial is therefore necessary. To the extent a response is  
13 required, Lane Bryant denies the allegations contained in paragraph 67 of the FAC.

14           68. Lane Bryant contends that the allegations contained in  
15 paragraph 68 of the FAC constitute conclusions of law and/or legal arguments and  
16 that no admission or denial is therefore necessary. To the extent a response is  
17 required, Lane Bryant denies the allegations contained in paragraph 68 of the FAC.

18           69. Lane Bryant contends that the allegations contained in  
19 paragraph 69 of the FAC constitute conclusions of law and/or legal arguments and  
20 that no admission or denial is therefore necessary. To the extent a response is  
21 required, Lane Bryant denies the allegations contained in paragraph 69 of the FAC.

22           70. Lane Bryant contends that the allegations contained in  
23 paragraph 70 of the FAC constitute conclusions of law and/or legal arguments and  
24 that no admission or denial is therefore necessary. To the extent a response is  
25 required, Lane Bryant denies the allegations contained in paragraph 70 of the FAC

26                           **PRAYER FOR RELIEF**

27           Lane Bryant denies that Plaintiff is entitled to any of the relief sought  
28 in each and every paragraph of the Prayer for Relief, or to any relief whatsoever, on

1 behalf of herself or on the behalf of the alleged putative class she purports to  
2 represent, the existence of which is expressly denied.

3 **DEFENSES**

4 Lane Bryant asserts the following defenses to the allegations set forth  
5 in the FAC in this action.

6 **FIRST AFFIRMATIVE DEFENSE**

7 (Failure to State a Claim)

8 1. The FAC and each alleged cause of action fails to state a claim upon  
9 which relief can be granted against Lane Bryant.

10 **SECOND AFFIRMATIVE DEFENSE**

11 (Statutes of Limitations)

12 2. The claims of Plaintiff and some or all purported class members are  
13 barred or limited by the applicable statute(s) of limitations, including but not  
14 limited to, California Code of Civil Procedure sections 338, 339, and 340, and  
15 California Business & Professions Code section 17208.

16 **THIRD AFFIRMATIVE DEFENSE**

17 (Failure to Exhaust Internal and Administrative Remedies)

18 3. The claims of Plaintiff and of each putative class member she purports  
19 to represent are barred to the extent that they failed to exhaust their internal and/or  
20 administrative remedies.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 (Lack of Standing)

23 4. The claims of Plaintiff and the class she purports to represent are  
24 barred in whole or in part because Plaintiff fails to satisfy the prerequisites for class  
25 certification, lacks standing under Business and Professions Code section 17204,  
26 and the California Labor Code, and Article III of the United States Constitution, to  
27 bring these claims, and therefore cannot represent the interests of others as to each  
28 of the purported causes of action.

**FIFTH AFFIRMATIVE DEFENSE**

(Not Appropriate For Class Action)

5. The types of claims alleged in the FAC on behalf of Plaintiff and the purported class are matters in which individual questions predominate and, accordingly, Plaintiff fails to satisfy any of the prerequisites for class certification as to any cause of action.

**SIXTH AFFIRMATIVE DEFENSE**

(Claims Not Common or Typical)

6. The claims alleged by the named Plaintiff are neither common to nor typical of those, if any, of the alleged class Plaintiff purports to represent.

**SEVENTH AFFIRMATIVE DEFENSE**

(Inadequate Representative)

7. The FAC fails, to the extent it asserts a class action, because Plaintiff is not an adequate representative of the purported class.

**EIGHTH AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

8. Plaintiff's monetary claims, and the claims of the putative members of the purported class, are barred, in whole or in part, because they have not appropriately or adequately mitigated their damages, if any.

**NINTH AFFIRMATIVE DEFENSE**

(Action Unconstitutional)

9. Prosecution of a representative action and certification of the alleged class as representative of the general public under California Business and Professions Code section 17200, based upon the facts and circumstances of this case, would be an unconstitutional denial of Lane Bryant's right to due process under the Fourteenth Amendment to the United States Constitution and the California Constitution.

**TENTH AFFIRMATIVE DEFENSE**

(Lack of Superiority)

10. The claims alleged may not be maintained as class claims for, among other reasons, failure to satisfy the requirement of superiority.

**ELEVENTH AFFIRMATIVE DEFENSE**

(Laches)

11. The claims of Plaintiff and some or all purported class members, including claims for damages, are barred in whole or in part by the doctrine of laches.

**TWELFTH AFFIRMATIVE DEFENSE**

(Estoppel)

12. The claims of Plaintiff and some or all purported class members are barred in whole or in part by their own conduct, actions, and/or inactions, which amount to and constitute an estoppel of the causes of action and any relief sought thereby.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Adequate Remedy At Law)

13. The claims of Plaintiff and of each purported class member pursuant to California Business and Professions Code section 17200, and the sought after injunctive and restitution remedies, are barred in light of the fact that Plaintiff and each putative member of the class she purports to represent have an adequate remedy at law.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Waiver of Claims)

14. The claims of Plaintiff and some or all purported class members are barred in whole or in part because such claims have been waived, discharged, and/or abandoned.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

15. The claims of Plaintiff and some or all purported class members are barred in whole or in part by the doctrine of unclean hands.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(Accord and Satisfaction)

16. The claims of Plaintiff and of each purported class member are barred in whole or in part by the doctrine of accord and satisfaction, and payment.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(Failure to Perform Conditions)

17. Plaintiff and some or all putative class members she purports to represent failed to perform the conditions necessary to give rise to any obligation on the part of Lane Bryant for the payment of wages alleged in the FAC.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(Setoff and Recoupment)

18. If any damages have been sustained by Plaintiff and/or any member of the class she purports to represent, although such damages are specifically denied, Lane Bryant is entitled under the equitable doctrine of setoff and recoupment to offset all overpayments and/or all obligations of Plaintiff or putative class members owed to Lane Bryant against any judgment that may be entered against Lane Bryant.

**NINETEENTH AFFIRMATIVE DEFENSE**

(Good Faith)

19. Any wages that were allegedly unpaid or withheld are the subject of a bona fide, good faith dispute and thus should not be subject to the imposition of penalties.



**TWENTIETH AFFIRMATIVE DEFENSE**

(Waiting Time Penalties)

20. The FAC fails to state a claim for waiting time penalties under Labor Code Section 203 to the extent that no such penalties can continue after the commencement of an action for the penalties.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Excessive Fine)

21. An award of penalties against Lane Bryant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Lane Bryant's due process and other rights under the United States and California Constitutions.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(Release)

22. The claims of some or all purported class members are barred or limited in whole or in part because such claims have been released.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

(Avoidable Consequences)

23. The claims of Plaintiff and some of the putative class members are barred, or damages limited, by the doctrine of avoidable consequences because Plaintiff and others could have avoided the alleged damages by reasonable effort, but failed to do so.

**RESERVATION OF RIGHTS**

Lane Bryant reserves the right to assert such additional affirmative defenses that may appear and prove applicable during the course of this litigation.

WHEREFORE, Lane Bryant prays for judgment that:

1. The Court deny Plaintiff's request to certify this action as a class action;

1           2.     Plaintiff take nothing by reason of the FAC, and that the FAC be  
2 dismissed with prejudice;

3           3.     Judgment be entered in favor of Lane Bryant and against Plaintiff on  
4 all causes of action;

5           4.     Lane Bryant be awarded their costs of suit incurred herein;

6           5.     Lane Bryant be awarded attorneys' fees incurred by this action; and

7           6.     The Court award Lane Bryant such other and further relief as it deems  
8 just and proper.

9 Dated: March 31, 2008

MORGAN, LEWIS & BOCKIUS LLP

10  
11  
12 By \_\_\_\_\_/S/  
13 Eric Meckley  
14 Attorneys for Defendant  
15 LANE BRYANT, INC.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28